

**The questions and answers set forth below are intended as guidelines for you to help agencies and state contractors meet the affidavit requirements announced by the Office of the Attorney General on January 8, 2004. These questions and answers are subject to change and revision as the circumstances may warrant or as new information may require.**

1. **Question:** Are affidavits required when the contract provides that the State will be receiving, rather than paying, amounts of \$100,000 or more?

**Answer:** No, the new policy only applies to contracts which require payment by the State of \$100,000 or more.

2. **Question:** Are affidavits required when the State contracts for services with the federal government?

**Answer:** No.

3. **Question:** Are affidavits required when the contract is between or among State agencies?

**Answer:** No.

4. **Question:** Are affidavits required when the State contracts with or provides grants to Connecticut municipalities.

**Answer:** Yes. Affidavits should be obtained from the municipal official signing the contract and from any municipal employee that may have negotiated the contract or grant award with the State. An employee providing clerical or technical support is not required to sign an affidavit.

5. **Question:** Which State employees and officials in each agency are required to file affidavits?

**Answer:** The purpose of the affidavit policy is to obtain full disclosure of all gifts that may have been received by State officials or employees who have the power and authority to influence and decide on the selection of a state contractor or lessor. Affidavits are not required from all agency employees who may have simply worked on the contract or may have been involved in the contract process. For example, affidavits are not required from employees who provided clerical or technical support to other employees in the agency with the authority to select or evaluate contractors or lessors. Rather, the agency should make a good faith effort to identify those individuals with the actual authority to participate in the evaluation or selection of a state contractor, including the agency head, if the agency head is part of that process.

6. **Question:** In regard to the affidavit required from the contractor or lessor, who is to determine which state agency or department has "supervisory or appointing authority over the contracting or leasing agency?"

**Answer:** The contracting or leasing agency is to determine which state agency or department has "supervisory authority over the contracting or leasing agency." As stated previously, the purpose of the affidavit policy is to obtain full disclosure of gifts received by state employees or officials who have the actual ability to influence the selection of a state contractor or lessor. Generally, the Governor's Office would need to be included in the affidavit submitted by all contractors, since the Governor's Office has general supervisory authority over all agencies. The agency should also determine whether OPM should be included to the extent it may have supervisory authority over certain aspects of the contracting or leasing agency. Employees of the Governor's office would be required to file an affidavit if they were involved in the selection of a particular contractor or lessor. Employees of OPM would have to file an affidavit if they were involved in the evaluation or selection of a contractor for another state agency.

7. **Question:** Is the agency required to obtain affidavits from state employees who have retired or otherwise left state service before any part of the agency contract evaluation or selection process began?

**Answer:** No. The affidavit is only required from state employees involved in the evaluation or selection of a state contractor or lessor. If the former employee was directly involved in the evaluation or selection of a contractor or lessor, the agency should request an affidavit from the former employee. If the former employee refuses to provide an affidavit, the state agency shall provide a statement that the former state employee has refused to sign an affidavit.

8. **Question:** Is a contractor or lessor required to include in its affidavit gifts to state officials and employees from former employees of the contractor?

**Answer:** The contractor or lessor should make a good faith effort to include in its affidavit gifts to state officials or employees that may have been given by former employees of the contractor or lessor. If the former employee was directly involved in seeking or obtaining state contracts or leases, but refuses to provide the necessary information concerning gifts to state officials and employees, the contractor should identify the former employee and state that the former employee has refused to provide information concerning gifts to state officials and employees.

9. **Question:** The affidavit asks for all gifts that were provided to a State employee or official over the past ten years. Is a present state employee or official who has not served with the state for ten years required to disclose gifts that may have been received before becoming a state employee?

**Answer:** Although individuals who may have received gifts before their state employment were not subject to the Code of Ethics at that time, employees involved in the selection or evaluation of state contractors or lessors should disclose gifts they received prior to their employment with the state from the state contractors or lessors they are selecting or evaluating. State contractors or lessors should disclose gifts to

individuals who were not state employees at the time the gift was made if the current state employee to whom the prior gift was given is involved in the selection or evaluation of the state contractor or lessor.

10. **Question:** If a former state employee, now working for a private business entity, has given gifts to current state employees of the contracting or leasing agency who are friends of the former state employee, is the private business entity required to disclose those gifts, even if the current state employee is not involved in the evaluation or selection process?

**Answer:** Yes. All gifts given to state employees of the agency with which the private business entity is contracting must be disclosed, even if the employee of the private business entity and the current state employee are friends and the current state employee is not involved in the selection or evaluation of the particular contract. The former state employee may wish to provide an explanatory letter describing the friendship.

11. **Question:** If a State employee or official signs an affidavit, but does not disclose certain gifts that may have been received over the past ten years because the gift was small and forgotten, may the employee amend the affidavit at a later time when the employee's recollection is refreshed?

**Answer:** Yes. The affidavit provides that the employee is disclosing "to the best of the employee's knowledge." If the employee has in good faith forgotten a gift at the time the employee signs the affidavit, and later recalls it, the employee may amend the affidavit at that time. If records or other means of refreshing recollection exist, the employee would be expected to review them. Of course, it is possibly understandable that small gifts received over the past ten years may be forgotten, but it is far less credible that large or valuable gifts will not be remembered by an individual.

12. **Question:** Some State contractors have many thousands of employees. How is the person signing the affidavit to determine if any of the entity's employees, officials or agents has given gifts to state employees during the past ten years?

**Answer:** We recognize that some private entities have hundreds or thousands of employees and that an affidavit concerning gifts by each over a ten year period may be impractical, particularly when employees have left the service of the private entity. Affidavits are not required from technical or clerical staff having no authority to seek or secure a contract or leaser with the state agency. One logical course would be to establish a due diligence procedure. Every company has a readily identifiable group of employees, officers or agents, including top management, lobbyists and salespersons that interact with the state, its agencies and employees. The private entity should identify those employees, officials or agents and determine whether they provided gifts to state employees or officials. In those circumstances, the private entity should provide an explanatory letter, identifying the employees, officials or agents who were asked by the company to disclose gift-giving and describing the due diligence the entity undertook to comply with the affidavit requirement.

13. **Question:** Are affidavits required from the prospective seller of land or interests in land when the land or property interest is being sold to the state?

**Answer:** Yes. Sales of land or interests in land valued at \$100,000 or more must be accompanied by affidavits from the seller of the land or interest in the land and the state agency employee or official involved in the selection or evaluation of the land or interest in land for purchase or lease by the state.

14. **Question:** Are affidavits required when the legislature, either through a special act or a general statute, has specifically directed a particular recipient of a contract, lease or property transfer, at a particular price and to particular terms, or has otherwise removed all discretion from the relevant agency to choose the recipient of a contract, lease or property transfer?

**Answer:** Affidavits are not required from members of the General Assembly who enact a law involving a contract or lease. Affidavits are not required from the contractor, lessor or transferor or employees of the contracting, transferring or leasing agency unless the contracting, transferring or leasing agency has discretion over the choice of the contractor, lessor or transferor, or provisions or conditions relating to the contract, lease or property transfer, including the price and terms of the contract, lease or property transfer.

15. **Question:** If an agency maintains a list of pre-approved contractors, are affidavits required each time an agency selects a contractor from the list of pre-approved contractors for a particular contract or activity?

**Answer:** Yes, if a choice among contractors is available. Each time a contractor from a pre-approved list of contractors is selected for an activity which has a value of \$100,000 or more, the contractor and the state official or employee making the selection from a pre-approved list of contractors must file affidavits. Of course, affidavits are required when contractors are initially selected to be placed on a pre-approved list. If an agency is making purchases under an established contract where there is no choice of vendors, no affidavits are required for those purchases.

16. **Question:** If a Commissioner is not involved in any respect in the selection of a contractor or lessor, does the Commissioner have to sign an affidavit?

**Answer:** No. The policy statement only applies to state employees or officials "involved with the selection of the person or entity for such contract or lease." If the Commissioner was not involved in the selection or evaluation, the Commissioner should sign a statement that the Commissioner was not involved in the selection or evaluation of the contractor or lessor.

17. **Question:** If an employee of an agency refuses to sign an affidavit, will the Attorney General's Office review the contract without the missing affidavit and is the employee who refuses to sign an affidavit subject to disciplinary action by the state agency?

**Answer:** The Attorney General's Office will review a contract even if an agency employee refuses to sign an affidavit, provided the appropriate affidavit is signed by the state contractor or lessor. State employees who refuse to sign affidavits based on the advice of their union representatives that the affidavit process is a new work rule in violation of their collective bargaining agreement are not subject to discipline. All employees obviously have the right to invoke the Fifth Amendment.

18. **Question:** Can the agency make the affidavit requirements more stringent in terms of values of gifts that must be reported and individuals who must report gifts.

**Answer:** No. The purpose of the policy is to provide a transparent but uniform reporting process. Any agency that wishes to go beyond the requirements of the policy established on January 8, 2004, should consult with this Office prior to taking such action.

19. **Question:** Can an agency require its employees to disclose all gifts they may have received from any private business entity or all private business entities that contract or lease with the state agency?

**Answer:** No. The agency cannot require its employees to sign general affidavits for all entities with which the agency has contracts or leases. The affidavit requirements are contract specific. Additionally, the affidavit requirement only applies to those state officials or employees with the authority to evaluate or select private business entities for state contracts or leases or who have the supervisory authority to influence such evaluation or selection.

20. **Question:** If an employee is ordered to sign an affidavit by a state agency and the employee refuses to sign an affidavit, can the employee appeal that decision?

**Answer:** The employee who refuses to sign an affidavit should contact his union representative and the agency should contact the Office of the Attorney General to discuss the matter and to determine whether an affidavit from the employee is required.